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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
|-----------------|-------------|----------------------|---------------------|
|-----------------|-------------|----------------------|---------------------|

09/360,262 07/26/99 REDDING

B DFG1004.5-US

EXAMINER

IM52/1019

MARTIN SAVITZKY ESQ
SYNNESTVEDT & LECHNER
1101 MARKET STREET 26TH FLOOR
PHILADELPHIA PA 19107

BECKER, D

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

10/19/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/360,262

Applicant(s)

REDDING ET AL.

Examiner

Drew E Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 10-11 and 15-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 10-11 recite "selected from the group consisting essentially of". It is not clear whether other materials can be included or not. If applicant wishes to claim only the stated materials, it is suggested that "essentially" be deleted.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. Claims 1, 3-4, 6-7, 9, 15, and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Redding Jr [Pat. No. 5,455,342].

Redding Jr teaches a method of treating polymers by dispersing the particulate polymer in a liquid (column 3, lines 3-11), applying an abrupt pressure change to the dispersion with a piston (column 3, lines 12-16), mechanical action (column 5, lines 50-66),

recovering the treated polymers in a collection vessel (column 6, line 61), drying at 40°C (column 9, line 66), the pressure treatment occurring at ambient temperature which was commonly accepted to be 25°C (column 8, line 25), modifying properties of the polymers including solubility, thermal profile, and viscosity (column 7, lines 1-12), and the polymers including dietary fibers such as bark, carboxymethylcellulose, lignin, methylcellulose, proteins and other natural polymers listed in the Polymer Handbook (column 14, Table VI).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2, 5, 8-10, 12-13, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Redding Jr in view of The Polymer Handbook.

Redding Jr teaches the above mentioned concepts as well as operating the air piston at 60-90 psi (column 8, line 13). The Polymer Handbook listed cellulose as a natural polymer (page 399). It would have been obvious to one of ordinary skill in the art to incorporate the cellulose of The Polymer Handbook into the invention Redding Jr since Redding Jr specifically includes all natural polymers listed by The Polymer Handbook (column 14, line 56), since The Polymer Handbook lists cellulose as a natural polymer (page 399), and since Redding Jr teaches the use of bark which essentially made up of

cellulose. It would have been obvious to one of ordinary skill in the art to vary the treatment time of Redding Jr since this would have been dependent upon a multitude of factors such as the material treated, the size of the particulate, and the amount of particulate; and since this would have been done during the course of normal experimentation and optimization. It would have been obvious to one of ordinary skill in the art to vary the amount of particulate in Redding Jr since this would have been dependent upon a multitude of factors such as the material treated, the size of the particulate, and the pressure level; and since this would have been done during the course of normal experimentation and optimization.

8. Claims 11 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Redding Jr as applied above, in view of Fennema [FOOD CHEMISTRY].

Redding Jr teaches the above mentioned concepts. Redding Jr does not teach the use of soy, wheat bran, oat, or oat hull. Fennema teaches that oat and barley brans are good sources of dietary fiber (page 218). It would have been obvious to one of ordinary skill in the art to include the oat bran of Fennema into the invention of Redding Jr since Redding Jr is directed to the treatment of natural polymers and since Fennema teaches that dietary fibers such as oat bran are natural polymers as well (page 218).

Response to Arguments

9. Applicant's arguments filed August 6, 2001 have been fully considered but they are not persuasive.

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Applicants argue that natural polymers are only a portion of dietary fiber. This is not deemed persuasive since the commonly accepted definition of dietary fiber is simply nondigestible polymers as shown by Fennema (page 218). Applicants also argue that "dietary fibers consist of the roughage component of grains and woods". However, Fennema specifically teaches that "Dietary fiber is not necessarily fibrous in nature. Dietary fiber is a nutritional term that has nothing to do with its physical or chemical nature" (page 218).

Applicants argue that Redding Jr. does not teach modifying properties. However, applicants' attention is drawn to column 7, lines 1-13 of Redding Jr which specifically teaches modifying properties such as thermal profile, solubility, viscosity, and turbidity profile.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 7am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

Drew Becker
October 15, 2001


KEITH HENDRICKS
PRIMARY EXAMINER